

REMARKS

Claims 17, line 16 and claim 18, line 5 are amended to change "back wall" to "top wall" to be consistent with the recitation of "top wall" at claim 17, line 4. The erroneous term "back wall" lacks antecedent basis.

The other amendments to claim 17 conform claim 17 to the terminology of claim 1 for the purpose of overcoming the restriction requirement, for the reasons set forth below.

In response to the restriction requirement mailed August 12, 2003, Applicant provisionally elects Group I, the apparatus claims 1-16. However, Applicant traverses the restriction requirement.

The restriction was between apparatus claims in Group I and method claims in Group II. The Examiner's stated basis for the restriction was that apparatus and method claims belong to different classes and are "distinct" because "the apparatus as claimed can be used to practice a materially different process, for example, a CVD (non-plasma) process.

Applicant asserts that the distinction between the apparatus and method claims described by the Examiner is erroneous. Method claim 17 does not specify the type of process performed in the chamber. In particular, method claim 17 does not specify that it must be a plasma process or that it cannot be a CVD process. Apparatus claim 1 and method claim 17 are identical insofar as: (1) they both recite a plasma chamber, and (2) neither claim recites the type of process (plasma, CVD, etc.) that must be performed within the chamber. Therefore, the apparatus and method claims are not "distinct" within the meaning of 35 USC 121.

Furthermore, Applicant asserts that restriction between the apparatus and method claims is improper under MPEP 803, which states that, even if two inventions are patentably distinct, restriction should not be required unless examining the second invention would "be a *serious burden* on the examiner. ... A serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as required by MPEP 808.02. That *prima facie* showing may be *rebutted* by appropriate showings or evidence by the applicant."

It must be emphasized that MPEP 803 states that separate classification of claims (such as separate classification of method and apparatus claims) creates a *merely prima facie* showing of serious burden, which can be rebutted by appropriate showings by applicant. Applicant hereby shows there is no serious burden in examining both the apparatus and method claims because *every feature*

recited in apparatus claim 1 is also recited in method claim 17. Therefore, the Examiner's search of method claim 17 inherently will include a search of every feature of apparatus claim 1. Accordingly, there is no serious burden in examining both the apparatus and method claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert J. Stern", with a long horizontal flourish extending to the right.

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